

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

v.

ZURY BRITO-ARROYO, et al.,

Defendants.

CRIMINAL FILE NO.

1:17-CR-337-TWT

ORDER

This is a criminal action. It is before the Court on the Report and Recommendation [Doc. 141] of the Magistrate Judge recommending denying the Defendant Arroyo-Garcia's Motion to Dismiss or to Sever Count 7 [Doc. 59 & 83], the Defendants' Brito-Maldonado and Brito-Arroyo's Motions to Suppress [Doc. 64, 77 & 114] and the Defendant Brito-Arroyo's Motion for Disclosure of Confidential Informants [Doc. 117].

I agree that the Defendant Arroyo-Garcia's Motion to Dismiss or to Sever Count 7 [Doc. 59 & 83] should have been granted. The relevant inquiry is whether proof of the illegal entry "constituted a substantial portion of the proof" of the drug trafficking offense. *United States v. Smalley*, 754 F.2d 944, 947 (11th Cir. 1985). If not, there is no "logical relationship" for joinder under Rule 8(a). *Id.* Proof of the

illegal reentry proves nothing about the drug trafficking offense. *Smalley* is controlling precedent and the cases relied upon by the Government are not. The Defendant Arroyo-Garcia's Motion to Dismiss [Doc. 59 & 83] is GRANTED. Count 7 is DISMISSED without prejudice.

The Magistrate Judge correctly concluded that the errors made in the application for the tracker warrant were mere negligence. There was no reason for the agents to lie about the vehicle being in Coweta County. There was simply a miscommunication. Certainly, the good faith exception to the exclusionary rule applies here. There was probable cause to make the traffic stop of the vehicle. The Defendant Brito-Arroyo's Motions to Suppress [Doc. 77 & 114] are DENIED.

The Court otherwise approves and adopts the Report and Recommendation as the judgment of the Court. The Defendant Brito-Maldonado's Motion to Suppress [Doc. 64] is DENIED.

SO ORDERED, this 3 day of June, 2019.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge